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## Central Coast Regional Water Quality Control Board

**TO: Designated Parties**

**FROM: Jean-Pierre Wolff, Central Coast Water Board Chair and Hearing Officer**

**DATE: May 22, 2015**

**SUBJECT: EVIDENTIARY RULING ON OBJECTIONS, ACL Complaint No. R3-2015-0011, Carpinteria Sanitary District**

### Introduction

The Assistant Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board), as part of the Prosecution Team, issued an Administrative Civil Liability (ACL) Complaint No. R3-2015-0011 pursuant to Water Code sections 13323 and 13385 to the Carpinteria Sanitary District (District or Discharger) alleging discharges of waste in violation of their National Pollutant Discharge Elimination System (NPDES) Permit No. CA 0047365 and Order No. R3-2011-0003. The Central Coast Water Board is scheduled to hear this matter during its May 29, 2015, meeting. Parties have exchanged evidence, submitted legal argument, rebuttal, evidentiary objections and responses. This Evidentiary Ruling addresses the evidentiary objections made by both the District. The District requests that the initial ACL Complaint be redacted and the amended ACL Complaint which incorporates stipulations agreed upon by the Prosecution Team and District be incorporated into the administrative record instead. The District also objects to the inclusion of Exhibits 11 and 19 by the Prosecution Team into evidence.

### Administrative Record

The Central Coast Water Board has distributed the amended ACL Complaint to the Board members and will include it in the online posting of this action. However, the initial ACL Complaint will not be redacted or removed from the record, as it is properly part of the administrative record in this case.

### Water Boards' Rules Governing Admission of Evidence

Adjudicative proceedings conducted by the water boards must be held in accordance with the provisions and rules of evidence set forth in Government Code section 11513. (Cal. Code Regs., tit. 23, §648.5.1.) This code section provides that this hearing need not be conducted according to technical rules relating to evidence and witnesses that would apply in a court of law. (Gov. Code, § 11513, subd.(c).) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons rely in conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (*Ibid.*) The Hearing Officer has flexibility to admit evidence and make determinations as to its credibility. Certain basic requirements must be met to constitute substantial evidence upon which the Central Coast Water Board can rely. Documents and other exhibits must have some foundational support to be properly admitted.

(See e.g. *Ashford v. Culver City Unified School Dist.* (2005) 130 Cal.App.4th 344, 350 [unauthenticated video tapes irrelevant to administrative proceeding].) There is no requirement under water board regulations or Chapter 4.5 of the Administrative Procedures Act that a proper trial-like foundation be made for exhibits and evidence.

The District's motion to exclude the Prosecution Team's exhibits on the basis of relevance is hereby denied. The Central Coast Water Board has broad discretion in allowing evidence into the record and finds that the challenged exhibits are not irrelevant. The District may discuss the relevance or appropriateness of either exhibit during its presentation at the Board meeting.

A handwritten signature in blue ink, appearing to read "JP Wolff", with a stylized flourish underneath.

JEAN-PIERRE WOLFF Ph.D.